IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P.NO. 201 OF 2003

PETITIONER : Chirimiri Colliery Vidyalaya Samiti Through Secretary Shri Vashitha Pandey, S/o Shri Nand Kishore Pandey, aged about 38 years, R/o.Chirimiri, District Korea (C.G.).

P. R. No. 02/03
Presented by Shri S. Zunjan
dated 09.01.03

Versus

RESPONDENTS : 1) State of Chhattisgarh
Through Secretary-Firms and Societies
D.K.S Bhavan, Mantrayala
Raipur (C.G.).

2) Assistant Registrar,
Firms and Societies
Bilaspur Division
Bilaspur (C.G.) State of M.P.

3) Registrar, Firms & Societies
Chhattisgarh
5 Anupam Nagar, Raipur (C.G.)

4) Election Officer and Inspector
Firms & Societies,
Bilaspur (C.G.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS OR CERTIORIARI OR ANY OTHER DIRECTIONS

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.201/03

Chirmiri Colliery Vidyalaya Samiti

Vs.

State of Chhattisgarh & others.

A N D

WRIT PETITION NO.1409/03

Shafi Ullah Khan

Vs.

State of Chhattisgarh & others.

O R D E R

Post for : 1/8/2003

Sd/-
Fakhruddin
Judge

31/7/2003

HIGH COURT OF CHHATTISGARH AT BILASPUR

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WRIT PETITION NO.1409/03

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O R D E R

Per Hon.Fakhruddin,J:

This common order shall dispose of W.P. No.201/03(Chirmiri Colliery Vidyalaya Samiti Vs. State of Chhattisgarh & others) and W.P. No.1409/03 (Shafi Ullah Khan Vs. State of Chhattisgarh & others).

2. By writ petition No.201/03 filed under Article 226 of the Constitution of India, the petitioner challenges the order dated 8/11/2002 (Annexure-P/1) as well as the order dated 10/4/2003 (Anneuxre-PP/1), which has been added by amendment. By Annexure-P/1, the list of Members and receipts etc., cashbook and account book were called.

3. Writ petition No.1409/03 is filed by one Shafi Ullah Khan on the ground that respondent no.5 is not allowing the elections to be held and the term had expired on 19/4/2001, whereas respondent no.4 had issued directions for holding the elections till 31/7/2001. He prays for a direction to the respondents to hold fresh elections for the Managing Committee and Executive Committee of the Chirmiri Colliery Vidyalaya Samiti at the earliest preferably within a fixed time frame, in the interest of justice. He also prays for a direction to the respondents to take all necessary and mandatory steps to ensure that free and fair elections to the said Managing Committee and Executive Committee of the Chirmiri Vidyalaya Samiti are held at the earliest and that the concerned respondents submit a report about the same before the Hon.court.

4. The petitioner in the writ petition No.201/03 had earlier filed a writ petition No.1768/01. During the pendency of that petition, order Annexure-P/7 has been passed. In that writ petition, an interim order dated 23/11/2001 (Annexure-P/5) was passed. During the pendency however I.A. No.1235/02 was filed for dismissing the writ petition as having become infructuous. This Court disposed of that writ petition vide order dated 7/8/2002 (Annexure-P/6), which reads as under:

"Heard.
I.A. No.1235/02 has been filed for dismissing the writ petition as having become infructuous. This is supported with an affidavit of Shri D.D. Mahant, Assistant Registrar, Firms and Societies, Raipur Division, Raipur (C.G.). Copy of the order dated 12/9/2001, of the District Education Officer, Korea, whereby it is indicated that the impugned order dated 3/8/2001 has been withdrawn is also annexed to the said I.A. Consequent to the withdrawal of the said order, which gave rise to the present petition, no cause of action survives.
Accordingly, writ petition stands disposed of as having become infructuous. It goes without saying that interim order stands vacated and the I.A. Nos.1235/02, 4740/02 and 4966/02 are also disposed of."

5. Learned counsel for the petitioner in writ petition No.201/03 submits that thereafter notice has been served and the supersession order under Section 33 of the C.G. Societies Registrikaran Adhiniyam, 1973 has been passed. Section 33 of the said Adhiniyam is quoted below:

"33. Supersession of governing body- If, in the opinion of the State Government, governing body of any State aided society:-

(a) persistently makes default or is negligent in the performance of the duties imposed on it by or under this Act regulations or byelaws of the society or by any lawful order passed by the State Government or Registrar or is unwilling to perform such duties; or
(b) Commits acts which are prejudicial to the interest of society or its members; or
(c) Is otherwise not functioning properly;

the State Government may, by order in writing remove the governing body and appoint a person or persons to manage the affairs of the

society for a specified period not exceeding two year in the first instance:

Provided that where it is proposed to remove the governing body of the society exclusively on the ground that election to the governing body were not held in accordance with the provisions of this Act or the regulations or byelaws made thereunder, no action shall be taken under this sub-section unless the Registrar or an Officer authorised by him in this behalf has convened a meeting of general meeting for conducting the election thereto in accordance with the provisions of this Act, or the regulations or byelaws made thereunder but has failed to get the new governing body elected;

Provided further that the Registrar or the Officer authorised by him shall, for the purpose of conducting election, have all the necessary powers under the Act or the regulations or byelaws made thereunder.

(2) No order under sub-section (1) shall be made unless the governing body has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered.

(3) The period specified in the order under sub-section (1) may, at the discretion of the State Government, be extended from time to time:

Provide that no such order shall remain in force for more than three years in the aggregate.

(4) The person or persons so appointed shall, subject to the control of the Registrar and such instructions as he may from time to time give, have power to exercise all or any of the functions of the governing body or of any officers of the society, and to take all such actions as may be required in the interest of the society.

(5) The State Government may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the society shall be payable from its funds.

(6) The person or persons so appointed shall at the expiry of the period of his or their appointment, arrange for the constitution of a new governing body in accordance with the regulations of the society.

(7) If there is a difference of opinion between the general body of the society and person or persons appointed under sub-section (1) in respect of any matter it shall be referred to the Registrar for decision and his decision thereon shall be final.

(8) During the period between the issuance of notice and the passing of an order removing the governing body may be required by the State Government to function under the supervision and with the approval of such authority as the State Government may specify in this behalf and no order made or resolution passed or any other act performed by the governing body, shall be effectual unless it is approved by such specified authority."

6. Learned State counsel submits that the order has been passed by the State Government. It is contended that though the order is under Section 33(1), but it does not state that an opportunity has been granted. It is further contended that the petitioner in writ petition No.201/03 after getting the notice Annexure-P/1 did not submit the reply and came directly before this Court.

7. Having considered the facts and circumstances of the case and material on record, in the opinion of this Court, ends of justice will serve if a direction is given to the petitioner in writ petition No.201/03 to submit a reply within 15 days and the State shall decide the same within two months after hearing the parties including the intervener. It is made clear that during the intervening period, affair shall be conducted strictly in accordance with law. If any financial irregularity is noted, it shall be brought to the notice of the State, which shall deal in such a manner as prescribed.

8. So far as writ petition No.1409/03 is concerned, it is contended that so far as elections are concerned, they can be held only after the aforesaid directions issued by this Court regarding reply and consideration are complied with. It is stated that as two years have already passed from 31/7/2001, it would be desirable that the elections afresh be held.

9. In this view of the matter, it is directed that the elections shall be held as expeditiously as possible preferably within three months after the compliance of the aforesaid directions contained in para 7 of this order and all parties to render due co-operation in conduct of the elections.

10. With the aforesaid directions and observations, both these petitions stand disposed of.

11. Consequently, M.W.P. & I.A., if any, stand disposed of.

Sd/-
Fakhruddin
Judge

1/8/2003

Hande/-